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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 830

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND HUGH L. RUTLEDGE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITIONERS,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on March 3, 1960. Such judgment affirmed a conviction of petitioners in the United States District Court for the Western District of North Carolina for criminal contempt under which the petitioner Rutledge was fined $5,000 and sentenced to 18 months in prison, and under which petitioner International Brotherhood was fined $50,000. The contempt consisted of an alleged disregard of injunctive orders entered by the United States District Court for the Western District of North Carolina in litigation be-

tween two trucking employers to which litigation petitioners were not parties.

OPINION BELOW

The Opinion of the Court of Appeals below is not yet reported and is attached hereto as Appendix A (R. Vol. III p. 22).

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1960.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

QUESTIONS PRESENTED

1. Whether an international union can be held liable in criminal contempt for an alleged willful violation of a Federal District Court's injunctive orders when such violation was committed by a secretary-treasurer of a local union affiliate, such liability being imposed on the basis of a purported agency relationship between the international and the local's secretary-treasurer established solely by reference to the international's constitution, and without any proof of actual knowledge, authorization or ratification of, or participation in, such violation by such international union, particularly as required by the Norris-LaGuardia Act, 47 Stat. 71, 29 U.S.C. 106.

2. Whether the Norris-LaGuardia Act, 47 Stat. 71, 29 U.S.C. 106, requires a District Court, in a trial of an international union for criminal contempt, either to instruct the jury concerning the necessity for proof of actual knowledge, authorization or ratification of or participation in the alleged contempt by such union, or, in the absence of such, proof, to grant a defense motion for a directed verdict.

3. Whether service of process on the secretary-treasurer of a local union affiliate constitutes proper service upon

the parent international union, under Rule 4(c)(3) or Rule 9(c)(1) of the Federal Rules of Criminal Procedure and affords due process to such international union under the Fifth Amendment to the Constitution of the United States.

4. Whether a person, who is not a party to a suit in which a temporary injunction order is issued and to whom the order is not directed, can be held in contempt for violation of such order where, pursuant to a labor dispute, he acts independently of, and indeed adversely to, the parties enjoined in an effort to carry out the terms of a valid collective agreement, and where his rights in the premises have in no way been adjudicated and the injunctive order could not have been made to run against him in the first instance.

STATUTES INVOLVED

The principal statute involved is the Norris-LaGuardia Act, Act of March 23, 1932, 47 Stat. 71 (29 U.S.C. 106), and particularly Sec. 6 thereof which states in full as follows:

> Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Also involved are the following which are set forth in Appendix B to this Petition:

Fifth Amendment to the Constitution of the United States.

Rule 4(c)(3) and 9(c)(1) of Federal Rules of Criminal Procedure.

STATEMENT

A. The Facts

Petitioners are an international union and one Hugh Rutledge, the secretary-treasurer of one of its local union affiliates, Local 55, located in Asheville, North Carolina. They were both convicted of criminal contempt for alleged willful violations of injunctive orders issued by the United States District Court for the Western District of North Carolina. (R. Vol. II, p. 352). The orders in question were issued by such court in a civil suit for injunction brought by the Overnite Transportation Company, a common carrier by truck, against three connecting carriers in Asheville, North Carolina, under which a temporary injunction was granted prohibiting such connecting carriers, their officers and employees, from refusing to handle Overnite's freight. The injunction was obtained during, but made no reference to, a labor dispute and strike in which Overnite was involved with such Local 55 of Asheville, North Carolina. (R. Vol. II, pp. 281-286). (Government Exhibits 9 to 12, Part II, record on appeal from District Court, pp. 35-38). Neither the International Union nor Local 55, nor any of their representatives, was a party to this injunction suit. The injunction was issued on the theory that a refusal to interline cargo violated duties imposed upon the carriers under the Interstate Commerce Act. (R. Vol. I, pp. 21-26). The alleged contempt violations consisted of various activities by petitioner Rutledge allegedly designed to prevent compliance with the injunction, consisting *inter alia* of alleged directions by Rutledge to employees of the three connecting carriers not to handle Overnite freight (R. Vol. I, pp. 11, 12) pursuant to an unchallenged "struck goods" agreement then in full effect between the carriers and Local 55. (R. Vol. II, pp. 208, 222).

Rutledge was not served with a copy of the injunction order, and there is no clear evidence that he knew that the order was actually effective, although he had knowledge of the injunction order. (R. Vol. I, p. 16). Rutledge, as

Secretary-Treasurer and Business Manager of Local 55, in engaging in the acts held to constitute contempt, was acting in the course of his lawful duties in his associations with members of the Local, and was performing his lawful duties in procuring compliance with the collective bargaining agreement which contained the aforesaid "struck work" clause. (R. Vol. III, pp. 1, 2).

After purported service of process of the contempt papers upon petitioner International Brotherhood of Teamsters by service on petitioner Rutledge, (R. Vol. II, p. 34), both the International and Rutledge were prosecuted for criminal contempt in the United States District Court for the Western District of North Carolina. (R. Vol. I, pp. 11, 12, 13).

The District Court had earlier overruled a motion by the International to quash the service upon it made by service on Rutledge (R. Vol. II, pp. 58, 59), and this ruling was affirmed by the courts below, solely on the basis of the agency relationship established by the International Constitution. (Governments Exhibit 5[1], R. Vol. II, pp. 103-105).

The case was tried before a jury and the jury found both such defendants guilty of criminal contempt. (R. Vol. II, p. 352). The only evidence of participation, authorization, ratification or even knowledge of the activities of petitioner Rutledge by petitioner International was the alleged agency relationship between the International and Rutledge as established by the Constitution of the International Brotherhood, and it was on this basis alone that the court below found the International accountable for Rutledge's conduct, and on this basis alone that the trial court overruled petitioners' motion for a directed verdict of acquittal (R. Vol. II, pp. 316-321), and permitted the question

[1] The clerk of the Court for the Fourth Circuit Court of Appeals has certified to this Court the entire record on appeal from the District Court—the International Constitution, "Plaintiff's EX. 5" is found on page 32 of Part 1 thereof.

of the International's accountability for Rutledge's conduct to go to the jury. There was no evidence whatsoever that any officer, representative or employee of the International as such (unless Rutledge be considered such an agent) had any knowledge of the injunctive orders or any knowledge of Rutledge's activities; as previously indicated the sole basis for liability on the part of the International was the alleged agency relationship between Rutledge and the International as established by the International's Constitution.

The trial court charged the jury in respect to the liability of the International as follows: (R. Vol. II, pp. 339, 340).

> The Govenment further says and contends—or rather, the prosecuting medium which is the United States in this particular case since it is being tried as a criminal action—that the International Brotherhood of Teamsters and Chauffeurs, with headquarters in Washington, is an organization having ramifications in all of the 48 States of the Union and which is operative from Washington and controls all the various local Unions in America; that it is rather difficult to get all of the connecting mediums that would indicate clearly and without a mistake just where it all ties in or where a portion of it starts and the remainder begins, but that from the evidence in this particular case the Government says and contends that when these stoppages came about in Asheville, that likewise in South Carolina, in Virginia, in various States of the South, including Georgia and Tennessee, that there all the transportation companies refused to handle Overnite's goods; that that was far beyond the realm of Local Union 55 in Asheville to handle, and that obviously through that action of interference, it must have come from some higher power, and that each interlocking or intertwining circumstance would indicate that those in Washington heading the International Brotherhood of Teamsters were fully aware of what was going on in Asheville, were keeping constantly in control of it, and that you should be satisfied that they or those representing it were fully aware of the circumstances, and that being so satisfied you should return a verdict of guilty against that defendant as well as the defendant Hugh L. Rutledge.

While there was an instruction by the District Court to the jury that it must be convinced beyond reasonable doubt that the International had notice or knowledge of the provisions of the injunction and that with such notice or knowledge it had "willfully and intentionally authorized, instructed, or caused Hugh Rutledge to commit the acts charged against Rutledge" (R. Vol. II p. 349), there was no charge that the International could not be held responsible for the unlawful acts of individual officers, members or agents "except upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof," as provided by the Norris-LaGuardia Act, 29 U.S.C. 106, and the trial court led the jury to believe that Rutledge's activities could be imputed to the International. (R. Vol. II, pp. 345, 346, 350).

The jury returned a verdict of guilty both as to the International and Rutledge, and the District Court thereafter imposed a fine of $50,000 upon the International and a fine of $5,000 upon Rutledge, and, in addition, sentenced Rutledge to imprisonment for 18 months. (R. Vol. II p. 361.)

On appeal the United States Court of Appeals for the Fourth Circuit affirmed the judgment of conviction but vacated the sentence of Rutledge because of the impropriety of imposing both a fine and imprisonment on him, and remanded the cause as to Rutledge for resentencing. (R. Vol. III, pp. 36, 37). As indicated above, the court below upheld both the service of process upon the International and the responsibility of the International for the acts of Rutledge solely upon the basis of an asserted agency relationship established by the International's Constitution; there was nothing in the record other than such Constitution indicating any agency relationship between the International and Rutledge.[2]

[2] While Deputy Marshal Teal testified that Rutledge told him at the time of service that the local was under trusteeship of the International, and a Mr. Bell in Washington was trustee of the local (R. Vol. II, p. 99), there is no other evidence of the trusteeship. Such testimony was held admissible

REASONS FOR GRANTING THE WRIT

I.

This case presents very important questions in the field of federal labor law—questions which should be settled by this court. There is conflict between the decision of the court below and applicable decisions of this Court—the latter holding (A) that a local union is an entity apart from its parent international union and is not per se its agent, and (B) that in any event an international union cannot be held liable for the unlawful acts of its agents absent proof of actual participation, authorization or ratification. This is the only case in which any Circuit Court of Appeals, or any other court, has held that an international union can be held *criminally* responsible for the unlawful actions of a representative of a local union because of an agency relationship purportedly established solely by reference to the provisions of the international's constitution, and without any proof whatsoever that the international union had any actual participation in or even knowledge of such unlawful actions.

A. The issue of the responsibility of an international union for the unlawful or criminal acts of officers or representatives of local union affiliates is obviously one of vital importance to the entire labor movement. As will be shown if this petition is granted and when a fuller brief is prepared, the constitutions of almost all international unions contain provisions comparable to those relied upon by the court below in establishing agency between the International and a representative of its Local 55, and if the decision below correctly states the law, all internationals

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by the court below solely because of "the fact that the agency had been established by other evidence," namely by the International Constitution. (R. Vol. II, pp. 96, 103, 104, 105). If, as petitioners contend, no agency was thereby established, there can be no showing in the record of a trusteeship. In any event, the trustee was Bell and not Rutledge, and there is no showing that Bell had even any knowledge of any of the alleged unlawful actions of Rutledge in allegedly violating the injunction.

will find themselves not only amenable to process by service on any local union representative but also criminally liable for unlawful actions or crimes committed by local union representatives, of which conduct or crimes the international has not even knowledge.

Until the decision of the court below, this Court, in the Coronado cases, and other courts generally have held that local unions are entities separate and apart from their international parent body, and that no agency relationship exists by the mere fact of such affiliation.

In the first Coronado case, 259 U.S. 344 at 395, this Court said as to agency that:

> A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are ultra vires the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency, which the constitutions of the two bodies settle conclusively. If the International body had interfered, or if it had assumed liability by ratification, different questions would have arisen.
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> But it is said that the district was doing the work of the International and carrying out it policies, and this circumstance makes the former an agent. We cannot agree to this in the face of the specific stipulation between them than in such a case, unless the International expressly assumed responsibility, the district must meet it alone. The subsequent events showing that the district did meet the responsibility with its own funds confirm our reliance upon the constitutions of the two bodies.
>
> We conclude that the motions of the International Union, the United Mine Workers of America, and of its president and its other officers, that the jury be

directed to return a verdict for them, should have been granted.

After a new trial this Court in the second Coronado case, 268 U.S. 295 at 304, affirmed a directed verdict for the International Union stating:

> . . . but surely it must be clearly shown in order to impose such a liability on an association of 450,000 men that what was done was done by their agents in accordance with their fundamental agreement of association.

The National Labor Relations Board, expert in this field, has summarzied and adopted the law as follows (In the Matter of International Brotherhood of Electrical Workers and Franklin Electric Construction Co., Inc., 121 NLRB No. 26):

> "The overwhelming weight of judicial authority, including the Supreme Court of the United States, is that a local union is a legal entity apart from its international and that it is not a mere branch or arm of the latter. (Footnote 3. *Coronado Co.* v. *United Mine Workers*, 268 U. S. 295, 299; *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, 393; *United Construction Workers* v. *Haislip Baking Company*, 223 F. 2d 872 (C. A. 4); cert. den. 350 U. S. 847; *Di Georgio Fruit Corp.* v. N.L.R.B., 191 F. 2d 642 (C.A.D.C.); *Pennsylvania Mining Co.* v. *United Mine Workers*, 28 F. 2d 851 (C.A. 8), cert. den. 279 U.S. 841; *Mile Branch Coal Co.* v. *United Mine Workers* (D.C.D.C.), 42 LRRM 2169, May 20, 1958; *Axel Newman Co.* v. *Sheet Metal Workers*, 3 Utah 2d 377, 277 P. 2d 922; *Ford* v. *United Brotherhood of Carpenters*, 315 P. 2d 299 (Wash.); *Harker* v. *McKissock*, 7 N. J. 323, 81 A. 2d 480; *De Maio* v. *Local 80-A, United Packinghouse Workers*, 29 N. J. Super. 341, 102 A. 2d 480; *Seidner* v. *Fish*, 131 Misc. 203, 226 (N. Y. S. 411.) That too has been the position of the Board * * *.")

B. Even if it be assumed, contrary to the foregoing authority, that the local is an agent of the International so that the acts of representatives of the local can be at-

tributed to the International, there nevertheless exists the statutory requirements of the Norris-LaGuardia Act that

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. [Mar. 23, 1932, c. 90, Sec. 6, 47 Stat. 71, 29 U.S.C. 106]

In this case although there is no question but that the International was at least "interested" in the labor dispute between Local 55 and the carriers—indeed the whole premise of the courts below was the interest of the International in the dispute between Local 55 and the carriers—there is complete absence of any "clear proof" that the International as such in any way actually participated in, authorized or ratified, the activities of Rutledge, Secretary-Treasurer of Local 55, which were found to be in violation of the injunctive orders of the District Court; in fact, and as far as the record shows, the International as such had absolutely no knowledge of any of Rutledge's alleged unlawful actions. This is a criminal case in which the element of willfulness is inherent. To charge the International Union with responsibility for the actions of local union representatives, even assuming they may be considered agents of the International Union, solely on the basis of an alleged general control which an international may possess over its local affiliates by virtue of its constitution, is to impose possible liability upon an international and its officers for every crime, misdemeanor, tort, or breach of contract committed by any of numerous local union officials —in the case of this International, some sixty-three hundred individuals. Surely Congress, in enacting Section 106 of the Norris-LaGuardia Act, expressly forbade such a consequence, and such is the interpretation of that Section

by this Court in *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395. There this Court stated:

> We hold that its purpose and effect was to relieve organizations, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration. (p. 403.)
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> We hold, therefore, that "authorization" as used in Section 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. We are of the opinion that the requirement of "authorization" restricts the responsibility or liability in labor disputes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general authority as such officers or members, to those associations, organizations or their members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followed from a granted authority, by the association or nonparticipating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence. (pp. 406, 407)

Even in the absence of such statute, courts are agreed that criminal actions of agents are not within the ordinary scope of the agency relationship, and in the absence of proof of actual participation or knowledge, such actions are not attributable to the principal.[3]

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[3] 2 Am. Jur. Sec. 383; 35 Am. Jur. Sec. 601.

The court below has ignored the established law, and its decision is in conflict with the decision of this Court in the Carpenters case, supra.

II.

The decision of the court below, which found no error in the failure of the District Court to instruct the jury as to the limited liability of the International under Section 6 of the Norris-LaGuardia Act, is in further conflict with the above decision of this Court in *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395. The effect of failure to properly charge the jury is very carefully set forth by this Court in the *United Brotherhood* case:

> No matter how strong the evidence may be of an association's or organization's participation through its agents in the conspiracy, there must be a charge to the jury setting out correctly the limited liability under Section 6 of such association or organization for acts of its agents. For a judge may not direct a verdict of guilty no matter how conclusive the evidence. There is no way of knowing here whether the jury's verdict was based on facts within the condemned instructions, note 19 above, or on actual authorization or ratification of such acts, note 18. (p. 408, 409)
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> A failure to charge correctly is not harmless, since the verdict might have resulted from the incorrect instruction. We are of the opinion, therefore, that the judge should have instructed the jury as to the limitations upon the association's liability for the acts of its agents under Section 6. The error is aggravated by the failure to give the correct charge upon request. (p. 409)
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> To repeat, guilt is determined by the jury, not the court. The problem is not materially different from one where the evidence against an accused charged with a crime is well-night conclusive and the court fails to give the reasonable doubt instruction. It could not be said that the failure was harmless error. (p. 410)

And though the failure so to charge was not excepted to, we would not be precluded from entertaining the objection. The erroneous charge was on a vital phase of the case and affected the substantial rights of the defendants. We have the power to notice a "plain error" though it is not assigned or specified. (pp. 411, 412) (Emphasis supplied)

The trial court not only failed to recognize and apply Section 6 of the Norris-LaGuardia Act, but repeatedly throughout the trial mislead the jury as to the applicable law. Thus the court stated, e.g.:

"I then ruled that as a matter of law—which, of course, is only my ruling—that 'the International Brotherhood of Teamsters and Chauffeurs, Warehousemen and Helpers was properly before the Court, on the theory that the agency of Mr. Rutledge was such as to make it responsible for an act or deed done by one who was serving in the capacity of an agent was sufficient in law to bind it." [R. Vol. II p. 105]

• • •

"Since it has been offered as such has been done by Mr. Baley, the District Attorney who is prosecuting this matter, I will now hold that evidence with respect to the actions of the Teamsters Union by and through its agent, Mr. Rutledge or any others whose agency might be shown would be competent as against the principal." [R. Vol. II p. 105]

• • •

"I have ruled, gentlemen of the jury, under my understanding of the law from the facts offered by the District Attorney that the International Brotherhood would be a superior of or an employer of the defendant or respondent Rutledge, and his acts or deeds would be the acts and deeds of the International Brotherhood. For that reason the objection to the question is overruled." [R. Vol. II. p. 110]

• • •

"As a matter of law, you could not convict the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers unless you would likewise con-

viet Rutledge, because it is all predicated upon the acts and deeds of Rutledge . . ." [R. Vol. II p. 350]

Under the decisions of this Court as to the application of Section 6 of the Norris-LaGuardia Act, the trial court was required to properly instruct the jury, or in absence of proof of actual knowledge, to direct a verdict for acquittal of the International, and for the court below to condone the failure of the District Court to do so is in conflict with the ruling of this Court in the Carpenters case.

III.

The decision of the court below affirming the validity of the service of process on the International by service upon local union representative Rutledge is in specific and direct conflict with the recent decision of the Court of Appeals for the Seventh Circuit in *Morgan Drivaway, Inc.*, v. *International Brotherhood of Teamsters*, 268 F. 2d 871. There the court, with this identical International Constitution before it, held that a local union was not such an agent of the International as to permit service upon the International by service upon an officer of a local union affiliate. While there was other evidence in addition to the International Constitution before the Seventh Circuit in that case respecting the agency relationship, the court could not have found, as it did, that no such relationship existed if it took the same view of this International's constitution as was taken by the court below. The Seventh Circuit stated in respect to the relationship between this International and its locals as follows:

> After setting out various provisions of International Union's constitution the court [District Court] further found that "these provisions of the Constitution evidence the fact that said affiliated local unions, Joint Councils, State and area Conferences, have constitutional authority to govern themselves and to transact business through: their own duly elected agents and representatives; nowhere in the Constitution of the

International Union is there any authority granted to the official or representative of any affiliated local union, Joint Council, State or area Conference, with the exception of the Chairman of area conferences, to hold himself out to be an official representative, or agent of the International Union." (id. at 898) This was followed by findings that neither San Soucie, Cors, Jones or Murrin was "an elective official nor an appointive International Representative or 'Organizer' of the International Union, nor has he held himself out to be such official, representative or 'Organizer.'" Ibid. • • • "In the instant case, the record shows that the state and area conferences, joint councils and local unions are, in fact, by constitution, autonomous entities." • • • Where, as here, local labor organizations, affiliated with an international parent union, are autonomous associations, service of process upon their officers or agents is not service "upon an officer or agent" of the international within the meaning of Section 301(3), 29 U.S.C.A. 185. • • • We have not found controlling those cases cited by defendants in which courts have ruled that there is no liability on the part of an international union for the misconduct of its locals, although there is some language there which might be said to lend support to our holding here.*

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* See Mile Branch Coal Co. v. United Mine Workers of America, D.C.D.-D.C., 162 F. Supp. 65, 42 LRRM 2169 (1959), where Judge Holtzoff said: "The mere fact, however, that Districts were constituent bodies embraced within the international union and that locals were constituent bodies embraced within the Districts, does not in and of itself make either the District or the local an agent of the International Union." To the same effect are United Mine Workers v. Coronado Coal Company, 259 U.S. 344, 395 (1922) and United Construction Workers v. Haislip Baking Company, 223 F. 2d 875, 36 LRRM 2315 (1955).

It is important to note that in *Morgan Driveaway* the question of agency was decided in connection with subsections (c), (d) and (e) of Section 301 of the Labor Management Relations Act of 1947 as amended. Subsection

(e)[1] permits far greater leeway in determining agency than does the rule applicable in the present case, which does not involve a suit under Section 301 or 303 of the National Labor Management Relations Act of 1947 as amended. On the contrary, the highly restrictive provisions of Section 106 of the Norris-LaGuardia Act, supra, are applicable here, the entire premise of both the District Court and Circuit Court below being that the International was at least "interested" in the dispute between Local 55 and Overnite. However, even given the broader scope of agency determination as set forth in Section 301 (e) of the Labor Management Relations Act of 1947 as amended, the Seventh Circuit, having before it the same International Constitution which the court below used as the basis for its agency determination, found no per se agency relationship between the International and a local affiliate by virtue of the control exercised by the International under the constitution over such affiliates. There is direct conflict between the decision of the Seventh Circuit and that of the court below. *Morgan Driveaway* was appealed to this Court and this Court denied certiorari. *Morgan Driveaway Inc.* v. *International Brotherhood of Teamsters*, 268 F. 2d 871, Cert. den. 361 U.S. 896.

IV

The activities of Rutledge in enforcing a collective agreement against the carriers could not constitute contempt of the injunctive orders against the carriers even if Rutledge had knowledge of such orders because Rutledge was acting independently of any parties to the injunction suit and his right to require compliance with a "struck goods"

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[1] Subsection (e) reads as follows:

"For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

clause had never been adjudicated. This likewise is an important question of federal labor law requiring adjudication by this court. If Rutledge can be bound by the terms of an injunctive order issued in a suit solely between employers, which employers were engaged in a labor dispute, an easy method of avoiding both the restrictions of the Norris-LaGuardia Act and the exclusive jurisdiction of the National Labor Relations Board will have been found.

Neither Rutledge nor the International were parties to the injunction suit and neither were persons to whom the temporary restraining order was directed. Nor could they have been. The litigation brought by Overnite against other employers arose out of a labor controversy. Local 55 was attempting to organize Overnite and the local's members employed by other carriers were exerting economic pressure on Overnite by refusing to handle freight coming to or going from that carrier pursuant to a valid clause in the collective agreement with the carriers permitting such refusal. (R. Vol. III, pp. 1 and 2, and R. Vol. II, p. 222). Under Sec. 101-115 of the Norris-LaGuardia Act, the court would have had no jurisdiction to restrain the Union. *Milk Drivers Union* v. *Lake Valley Farm Products*, 311 U.S. 91. *East Texas Motor Freight Lines* v. *International Brotherhood of Teamsters* (CA 5), 163 F. 2d 10. *Mead Inc.* v. *Teamsters Union* (CA 1), 217 F. 2d 6. And under the Taft-Hartley Act the National Labor Relations Board would have had exclusive jurisdiction to deal with the attempt by Rutledge and Local 55 to enforce the struck goods agreement with the carriers. (See *Local 1976, United Brotherhood* ——— v. *NLRB (Sand Door & Plywood Co.)* 357 U.S. 93 and *Garner* v. *International Brotherhood of Teamsters*, 346 U.S. 485.)

Consequently, if the activities of Rutledge, complained of as constituting contempt, could not have been the subject of the original orders, can such activities, under any lawful theory, come collaterally within the scope of such injunctive orders?

Furthermore, examining closely the allegations of the

order to show cause and the accompanying proof, there was no course of conduct by any petitioner violative of the injunction. In order for a third party to be in contempt of an injunction not directed against him it must be established that he aided or abetted or acted in collusion with a party who was bound to obey the order. *Chase National Bank* v. *City of Norwalk*, 291 U.S. 431, 437, 78 L. ed. 894, *Regal Knit* v. *NLRB*, 324 U.S. 9, 89 L. ed. 661. The conditions under which a party not specifically enjoined can be brought within the terms of injunction are spelled out by this Court in *Chase National*, at 436, 437 in these words:

> The prayer of the bill sought relief solely against the City and "its officers, officials, agents, employees and representatives." It is true that persons not technically agents or employees may be specifically enjoined from knowingly aiding a defendant in performing a prohibited act if their relation is that of associate or confederate. Since such persons are legally identified with the defendant and privy to his contempt, the provision merely makes explicit as to them that which the law already implies. See Re Lennon, 166 U.S. 548, 41 L. ed. 1110, 17 S. Ct. 658. But by extending the injunction to "all persons to whom notice of the injunction should come," the District Court assumed to make punishable as a contempt the conduct of persons who act independently and whose rights have not been adjudged according to law. See Alemite Mfg. Corp. v. Staff (C.C.A. 2d) 42 F. (2d) 832. Under the clause inserted in the decree, officials of the State of Ohio might be proceeded against for contempt, if they should apply to the state court to enforce its judgment, although acting solely in the performance of their official duty. To subject them to such peril violates established principles of equity jurisdiction and procedure.

In the *Alemite Mfg. Company* case cited with approval in *Chase National*, Judge Learned Hand made clear that the court cannot bind the whole world; that parties not named in an injunction order "must either abet the defendant or be legally identified with him." Nothing could be clearer than that the interests of Rutledge and the enjoined carriers with whom Local 55 had contracts were neither

sympathetic or identical. Rutledge was acting entirely independently of the carriers in insisting upon compliance with the collective bargaining agreements. Rutledge's actions were perfectly consistent with his duties and obligations under these agreements. He was not and could not in any sense be said to be acting for or on behalf of or in league with the carriers; in fact, he was acting adversely to these carriers in enforcing against them their agreement not to handle Overnite freight. The carrying out of lawful activities by a person not a party to an injunction under these circumstances and under these authorities cannot be grounds for contempt. The District Court, under these circumstances, was required to direct a verdict of acquittal.

CONCLUSION

Questions of grave importance respecting the liability of international unions for alleged criminal acts committed by local union representatives, and concerning liability of local union representatives for contempt of injunctive orders in litigation to which they are not parties and to which they could not be made bound, are present in this case and require adjudication by this Court particularly when the decision below on these questions is in conflict with expressions of this Court. It is respectfully submitted that, for the reasons asserted above, the Petition for a Writ of Certiorari should be granted in this case.

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APPENDIX A

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7953.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Hugh L. Rutledge,
Appellants,
versus
United States of America,
Appellee.

IN THE MATTER OF: APPLICATION TO ADJUDGE THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND HUGH L. RUTLEDGE, SECRETARY-TREASURER OF ITS LOCAL UNION NO. 55 IN CRIMINAL CONTEMPT.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.
WILSON WARLICK, DISTRICT JUDGE

(Argued November 19, 1959. Decided March 3, 1960).

Before, SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Robert S. Cahoon (Herbert S. Thatcher on brief) for Appellants, and James M. Baley, Jr., United States Attorney for Appellee.

HAYNSWORTH, Circuit Judge:

Charged with wilful violations of injunctive orders of the United States District Court for the Western District of North Carolina, the defendants were prosecuted in that court for criminal contempt. They were convicted. A fine of $50,000 was imposed upon the International and one of $5,000 upon the individual defendant, Rutledge. In addition, Rutledge was sentenced to imprisonment for eighteen months.

Overnite Transportation Company, a common carrier by truck, had arrangements for the interchange of freight in Asheville, North Carolina with several connecting carriers. Employees of those connecting carriers at their Asheville terminals, in May 1959, refused to handle Overnite's freight because of a labor dispute in which Overnite was engaged.

In a civil action brought by Overnite in the United States District Court for the Western District of North Carolina, temporary injunctions were granted. These prohibited Overnite's connecting carriers in Asheville, their officers and employees, from refusing to handle Overnite's freight.

The validity of these temporary injunctions has not been questioned.

Though the individual defendant, Rutledge, was present in the courtroom when the decision to grant the temporary injunctions was announced, he engaged, thereafter, in an extended course of conduct designed to prevent compliance with the orders of the court. He does not deny that his conduct was a willful violation of the orders, except to the

extent that he contends he had no actual knowledge that the orders had been filed.[1]

I

The principal questions arise out of the relationship between Rutledge, the individual defendant, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, his codefendant. Involved are questions of the validity of the service of process upon the International by delivery of a copy of the petition and order to Rutledge and of the International's substantive accountability for Rutledge's conduct.

Rutledge was the Secretary-Treasurer of Local No. 55 of the International. The question, then, is whether he was an agent of the International or agent only on an autonomous local. We think the finding of the District Judge, on the motion to quash the service, and of the jury, on the merits, that he was an agent of International is amply supported.

The local and the conduct of its affairs are regulated in detail by the International's constitution. That document also reserves extensive powers to still further regulate and control the local and its members, which powers may be exercised in some instances by a Joint Council, in others by an Area Conference, by the General President or the General Executive Board, decisions of subordinate bodies being subject to broad review by the General President and the General Executive Board.

Membership. Members of the local are members of the International. The local must accept as a new member

[1] There is no substance in this contention. He was present when the court announced that the orders would be filed. They were promptly filed, as were the bonds which they required. There was testimony that Rutledge was later shown a certified copy of one of the orders, that he expressd disdain for them and that his efforts to prevent compliance with the orders continued after service upon him of a citation for contempt because of their violation.

any member of International holding a valid transfer card from another local. Upon request, it must issue such a transfer card to anyone of its members in good standing whose dues are current, and an individual loses his membership in International if he works in the jurisdiction of a new local and does not obtain a proper transfer.

The local may not refuse admission to membership of a driver who operates his own equipment under a lease or other arrangement, unless the General President decides that it may.

International may expel or suspend an individual member for any of a long list of causes, including such things as disloyalty to International or disobedience to International's rules or directions. Local's expulsion or suspension of its own members is subject to review by International.[3]

Internal Affairs of Local. International's constitution requires the local to hold at least one meeting of its membership each month and prescribes the rules of order of the meeting. It specifies the offices to be filled by the local and the duties of each officer, particularly those of the Secretary-Treasurer, who is the officer principally in charge of financial affairs and who has the responsibility of regularly reporting and accounting to International.[4] It regulates the terms of local offices and the time for holding elections. It sets up a procedure by which International may suspend officers of locals charged by an individual member or International with disloyalty, gross inefficiency or other offenses, and, after trial, International may remove or discipline any such officer. It gives International the right to audit the affairs of the local, and, for that purpose, to obtain possession of all of its books and records.

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[3] "International," as here used, includes the General President, the General Executive Board and other bodies set up by International whose decisions and orders are binding upon the local.

[4] Even such things as how the Secretary-Treasurer disburses funds of the local, and upon what signatures, are controlled by International's constitution.

A charter is issued to the local upon a contract signed by the Secretary-Treasurer of the local in which he acknowledges that the charter and, if framed by the local, the frame are the property of International and will be returned to International upon demand. If the charter is revoked or suspended or the local put into trusteeship by the International, possession of all funds, property, books and records of the local must be delivered to International, and such properties will not be returned to the local unless the local is restored by International to good standing within two years.

A local may not dissolve or disaffiliate over the objection of seven members. If it does dissolve or disaffiliate, all of its funds, properties and records become the property of the International.

International's constitution also controls such things as minimum dues payable by individual members, the amount being substantially in excess of International's capitation taxes.

Except for stationery, the local must buy all of its supplies from International.

External Affairs of Local. The local may not engage in a strike, boycott or lawsuit, or become "involved • • • in any serious difficulty," without prior notice to International, which has the right to prevent or modify the proposed action of the local.

The local can negotiate for a collective bargaining agreement, but its terms must be approved by International. If the Area Conference negotiates on an area basis, however, its agreements, when approved by a majority of International's members in the area, are binding upon locals which do not wish to accept it. Area contracts, binding Local No. 55, were in effect in the Southeastern Area.

International's decisions in jurisdictional questions are binding on the local.

The local may solicit financial assistance from other locals only with the consent and approval of International.

International has the right to compel the local to accept an offer to arbitrate a dispute.

Right to Exercise Direct Control. If International's General President believes that any of the officers of the local are dishonest or incompetent, or that the local is violating International's constitution or laws, or that its affairs are being conducted in a manner adverse to International's interest, he may appoint a trustee who is empowered to seize the local, appoint officers, conduct its affairs and possess and manage its moneys and properties. The General President is required to hold a hearing, either before or after appointing a trustee for a local, but the ultimate decision is his alone to make. There is a right of appeal from the decision of the General President to the General Executive Board.

Unless the local is restored to its former status within two years following the appointment of a trustee, it loses its conditional right to have its funds, property and records restored to its possession and International becomes the unconditional owner of all such property.

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This summary of the provisions of International's constitution bearing upon its control of the local is not exhaustive. The constitution gives the International control of many other details of the local's business and operations. What has been said, however, should suffice to show that the local is no autonomous body, but a subdivision of International subject to International's control.

The provisions of International's constitution were before the District Court when its motion to quash the service was denied. It showed such extensive control and direction of the local as to warrant the conclusion that the local is

a component of the International. The local is the internal organizational means which the International employs to keep its accounts of its membership, to collect its revenues, and to execute and enforce its policies. If all of the other general and specific rights of control vested in International should prove insufficient to assure subservience of the local in a particular matter, the right to suspend the charter and seize immediate control of a local which adopts an independent course must be effective.

This controversy arose out of efforts to enforce a boycott of freight handled by an unorganized trucking company. This is activity in which, under International's constitution, a local could not engage except with International's specific approval. To say that Rutledge was acting for an autonomous and independent local and not for the International, under these circumstances, cannot be squared with realism.

If Rutledge was an agent of International, he clearly was the kind of agent upon whom process might be served. The record discloses that is was he who managed the affairs of the local, conducted its correspondence and acted for it. The Secretary-Treasurer of the local is the officer who is required by the International to sign the charter contract and to report and account in detail to International. It is to him to whom the International looks as the responsible head of that subdivision of its activity.

The only objection to the service is founded upon the contention that Rutledge was not shown to have been an agent of the International. Since we find that he was, we must sustain the District Court in overruling the motion to quash the service.

Other courts under similar circumstances, after examining the governing constitutions, have reached similar

conclusions.[4] Of course, if the local is autonomous and independent, a different result would be required.[5]

In this case, there was also evidence that Local No. 55 was in trusteeship, under the immediate, direct control of the International, the trustee being an official in International's Washington office and Rutledge his appointed agent. This came in through the testimony of a deputy marshal who served a subpoena duces tecum upon Rutledge and obtained a copy of International's constitution and other documents from him.

Among other things, the subpoena sought the production of a copy of the bylaws of Local No. 55, and a copy of the document which appointed the trustee. The marshal testified

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[4] United Mine Workers of America v. Patton, 4 Cir., 211 F. 2d 742; United Mine Workers of America v. Meadow Creek Coal Company, 6 Cir., 263 F. 2d 52; Clayeraft Co. v. United Mine Workers of America, 6 Cir., 204 F. 2d 600; Operative Plasterers' and Cement Finishers International Ass'n. of the United States and Canada v. Case, D.C. Cir., 93 F. 2d 56; Wilson & Co., Inc. v. United Packinghouse Workers of America, D.C., S.D.N.Y., 83 F. Supp. 162. See also Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 4 Cir., 148 F. 2d 403; Beaty v. International Association of Heat & Frost Insulators & Asbestos Workers, 248 N.C. 176, 102 S.E. 2d 763; Spica v. International Ladies Garment Workers' Union, 388 Pa. 382, 130 A. 2d 468; cf. Morgan Drive Away, Inc. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 7 Cir., 268 F. 2d 871. Whether, in light of the other evidence presented in Morgan Drive Away, we might have been constrained to affirm a finding by the District Court that there was no agency relationship, we need not consider.

[5] Farnsworth & Chambers Co. v. Sheet Metal Workers International Association, Local 49, D.C., N.Mex., 125 F. Supp. 830; Isbrandsen Co., Inc. v. National Marine Engineers' Beneficial Association, D.C., S.D.N.Y., 9 F.R.D. 541; Dean v. International Longshoremen's Association, D.C., W.D. La., 17 F. Supp. 748; Singleton v. Order of Railway Conductors of America, D.C., S.D. Ill., 9 F. Supp. 417; Christian v. International Association of Machinists, D.C., E.D. Ky., 7 F. 2d 481.

that Rutledge told him there were no bylaws[6] and in his possession, no papers evidencing the appointment of the trustee. He said, however, the local was in trusteeship and that he, Rutledge, was acting for, and responsible to, the trustee.

The International now says that these extrajudicial declarations were not admissible to prove that Rutledge was an agent of the International.[7]

Where the fact of agency has been established by other evidence, however, such declarations by the agent are unobjectionable.[8] When it had been made apparent that Rutledge was the chief executive officer of the local, in general charge of its affairs, and the man through whom the International acted and directed the conduct of its business in the area, it was within his apparent authority, in answer to a proper inquiry, to explain the status of the local and its current relation to the International.[9]

When the International is extensively engaged in activity within the district, it should be amenable to process there, and such process is appropriately served upon the agent who has general charge and direction of the activity. We think the objection to the service upon International was properly overruled.

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[6] There would be no universal need bylaws, in any event, since International's constitution covers in detail the subjects with which bylaws are usually concerned. The constitution provides that a local not in trusteeship may adopt bylaws provided (1) they do not conflict with the constitution, and (2) are approved by International. The field within which such bylaws might become operative is very limited. There is specific provision, for instance, for a bylaw, if approved by International permitting the payment of dues quarterly rather than monthly.

[7] No such objection was made to this evidence when offered during the course of the hearing on the motion to quash the service. Proper objection was made when the same evidence was offered and received at the trial.

[8] Wilson & Co. v. Clark, 259 Ala. 619, 67 So. 2d 898; Balder v. Corbin, 95 Ohio App. 249, 115 N.E. 2d 711; Hayward v. Yost, 72 Idaho 415, 242 P. 2d 971; Buchanan v. Wilson, 159 Va. 49, 165 S.E. 422; Adams v. Carlo, Mo. App., 84 S.W. 2d 682.

[9] Restatement, Agency 2d, § 285.

II

What has been said answers the related objection that the jury should not have been allowed to attribute to the International responsibility for Rutledge's conduct. The showing of the agency relationship made evidence of Rutledge's acts admissible against the International and furnished the basis for the jury's finding that the International was responsible for the acts which constituted the contempt.

III

Complaint is made of the denial of a motion for a bill of particulars made just as the trial was about to commence.

This proceeding was begun by the service of an order to show cause and a petition which charged that the defendants "on or about the 8th day of June, 1959 and on various dates and occasions thereafter knowingly and wilfully solicited, urged and directed the companies and various persons, who were subject to said orders, to disregard and violate the provisions of said orders and threatened reprisal against them if they honored and obeyed the said orders of the Court." Attached to the petition were three affidavits in which reference was made to a number of specific acts within the allegations of the petition. The defendants were informed that the District Attorney intended to offer evidence of order similar specific acts. The motion for a bill of particulars sought information in advance of the detail of these additional specific acts.

Made at the time the trial was about to commence, we think the denial of this motion was within the discretion of the District Judge.[10] The other specific instances were largely cumulative. The defendants offered no evidence in

[10] Wong Tai v. United States, 273 U.S. 77, 47 S.Ct. 300, 71 L. Ed. 545; Bowles v. United States, 4 Cir., 50 F. 2d 848; Bullock v. United States, 6 Cir., 265 F. 2d 683.

their behalf, not even with respect to the specific instances disclosed to them in advance through the affidavits, and there is nothing to show that their defense would have been aided or modified, in any way, had the motion been granted and the trial delayed.

IV

There are other contentions arising out of the receipt of evidence and comment of the District Court during the course of the trial. These we have examined, but find no merit in them.

V

The District Attorney appropriately invited attention to the fact that the power of the court to punish one found guilty of a criminal contempt is limited to the imposition of a fine or imprisonment, in the alternative.[11] Both forms of punishment may not be imposed for the same offense.[12] It was improper to impose both forms of punishment upon Rutledge.

While we affirm the judgments of conviction, the sentence of Rutledge will be vacated and the case, as to him, remanded for resentencing.

Affirmed in part, sentence of the individual defendant vacated and the cause remanded for resentencing.

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[11] 18 U.S.C.A. § 401.

[12] In re Bradley, 318 U.S. 50, 63 S.Ct. 470, 87 L. Ed. 608; MacNeil v. United States, 1 Cir., 236 F. 2d 149; Carter v. United States, 5 Cir., 135 F. 2d 858.

APPENDIX B

Fifth Amendment to the Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Rule 4(c)(3) of Federal Rules of Criminal Procedure:

> "Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address."

Rule 9(c)(1) of Federal Rules of Criminal Procedure:

> "Execution of Service. The warrant shall be executed or the summons served as provided in Rule 4(c)(1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive

service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a commissioner."